Supreme Court, U.S.
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No. 94-___

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

ALLIED-SIGNAL AEROSPACE COMPANY,
GARRETT ENGINE DIVISION AND
GARRETT AUXILIARY POWER DIVISION,

Petitioner,

v.

THE UNITED STATES, THE TORRINGTON COMPANY,
AND FEDERAL-MOGUL CORPORATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Does this Court's mandate requiring an agency to support a departure from its policy with a reasoned explanation on the administrative record apply to a federal agency operating in an investigatory capacity not subject to the Administrative Procedure Act?

II. Did the United States Court of Appeals for the Federal Circuit improperly and inconsistently interpret Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29 (1983), as inapplicable to an agency's change of direction that does not rise to the level of revoking its regulation promulgated under the rulemaking procedures of the Administrative Procedure Act?

PARTIES TO THE PROCEEDING

All parties to the proceeding below are set forth in the caption to the case. Pursuant to Rule 29.1 of the Rules of this Court, the parent company of Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Auxiliary Power Division is Allied Signal, Incorporated. Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Auxiliary Power Division does not have any subsidiaries. The Torrington Company is a wholly-owned subsidiary of the Ingersoll-Rand Company and does not own any subsidiaries. Federal-Mogul Corporation does not have a parent company or any subsidiaries.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Petitioner, Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Auxiliary Power Division (hereafter "Allied-Signal"), respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Federal Circuit, entered in the above-captioned proceeding on June 30, 1994.

OPINION BELOW

The June 30, 1994, opinion of the Court of Appeals for the Federal Circuit (hereafter "Federal Circuit") is reported at 28 F.3d 1188 and reproduced in Appendix (hereafter "App.") A, pp. 1a-10a. The October 14, 1993, opinion and judgment of the United States Court of International Trade (hereafter "CIT") is reported at 17 CIT ___ and 833 F. Supp. 935 and is reproduced in App. B, pp. 11a-17a. The September 1, 1993, remand determination of the International Trade Administration of the United States Department of Commerce (hereafter "ITA") is not published; it is reproduced in App. C, pp. 18a-21a. The July 27, 1993, remand order of the CIT is not published; it is reproduced in App. D, pp. 22a-23a. The June 22, 1993, opinion of the Federal Circuit is reported at 996 F.2d 1185 and reproduced in App. E, pp. 24a-40a. The July 1, 1993, errata to the Federal Circuit's June 22, 1993, opinion is not published; it is reproduced in App. F, p. 41a. The September 17, 1992, opinion and judgment of the CIT is reported at 16 CIT 811 and 802 F. Supp. 463 and is reproduced in App. G, pp. 42a-53a. The June 27, 1991, final determination of the ITA is reported at 56 Fed. Reg. 31,748 and is reproduced in App. H, pp. 54a-66a. The relevant text from the ITA's issues appendix, included by the ITA in a final determination related to the underlying administrative proceeding, is reported at 56 Fed. Reg. 31,692 and is reproduced, in part, in App. I, pp. 67a-83a.

STATEMENT OF JURISDICTION

The Federal Circuit entered its judgment on June 30, 1994. None of the parties filed a petition for rehearing. Pursuant to 28 U.S.C. § 2101(c) (1988), Allied-Signal has timely filed this petition within 90 days from the entry of the Federal Circuit's judgment. Further, this Court has jurisdiction to review the Federal Circuit's judgment pursuant to 28 U.S.C. § 1254(1) (1988).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Section 1677e of Title 19 of the United States Code provides in pertinent part:

> **(c) Determinations to be made on best information available.** In making their determinations under this title, the administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

The full text of 19 U.S.C. § 1677e is reproduced in App. J, pp. 84a-85a. The full text of 19 C.F.R. § 353.37, which also applies to this proceeding, is reproduced in App. K, p. 86a.

STATEMENT OF THE CASE

Allied-Signal is a United States company that purchases and imports into the United States ball bearings and cylindrical roller bearings manufactured by SNFA S.A. (hereafter "SNFA"). SNFA is a small French manufacturer of customized aerospace bearings. The SNFA bearings that Allied-Signal purchases and imports into the United States are subject to an antidumping duty order administered by the ITA. This antidumping duty order applies to antifriction bearings imported from France. See Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof From France, 54 Fed. Reg. 20,902 (1989).[1] The antidumping duty

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[1] There also are several other antidumping duty orders in existence which apply to antifriction bearings imported from other countries.

order requires Allied-Signal, as the importer of record, to pay the cash deposits of estimated antidumping duties and finally assessed antidumping duties on all subject merchandise Allied-Signal enters into the customs territory of the United States.

This proceeding was initiated when Allied-Signal requested the ITA to conduct the underlying antidumping administrative review of SNFA's sales of subject merchandise during the review period. Other parties also requested the ITA to review their sales during the same review period. The underlying administrative review, therefore, comprised a multiple-respondent review involving several French bearing manufacturers. App. H, pp. 54a-66a.

Pursuant to Section 751 of the Tariff Act of 1930, as amended, the ITA must conduct an administrative review of the antidumping duty order when it receives a request from an interested party. 19 U.S.C. § 1675 (1988). The ITA does not conduct this administrative review pursuant to the Administrative Procedure Act. Rather, in an administrative review, the ITA exercises the investigatory power Congress granted the ITA in the Tariff Act of 1930, as amended.

In an administrative review, the ITA calculates the actual amount of antidumping duties to be assessed on each item of subject merchandise entered into the customs territory of the United States during the period of review. 19 U.S.C. § 1675 (1988). The ITA also establishes the estimated amount of antidumping duties to be deposited for entries of subject merchandise that occur during the subsequent administrative review period. Id. In order to make these determinations, the ITA calculates the amount by which the foreign market value of comparable merchandise exceeds the United States price of the entry. Id. The calculated difference for each entry becomes the assessed antidumping duty for the current period of review, while the weighted average of all the calculated differences becomes the deposit rate for the subsequent review period.

To obtain the information necessary to make these calculations, the ITA issues a three or four-part questionnaire normally comprised of Sections A, B, C and, if necessary, D. This questionnaire requires the recipient to provide the ITA with a complete listing of all its United States and foreign market sales of subject merchandise made during the period of review. The ITA issues this questionnaire to the foreign manufacturer of the subject merchandise.

In this case, SNFA officially received Section A of the questionnaire from the ITA. SNFA fully responded to Section A of the questionnaire. App. I, pp. 69a and 75a. SNFA subsequently received Sections B, C and D of the questionnaire from the ITA. SNFA, however, was unable to provide the data required in the form requested by the ITA. App. I, p. 75a and App. E, pp. 38a-39a.

SNFA's failure to provide a complete response to the questionnaire caused the ITA to apply the "best information available" (hereafter "BIA") for assessing the antidumping duties and estimating the deposit rate applicable to entries of the subject merchandise. App. I, pp. 69a and 75a. Section 776 of the Tariff Act of 1930, as amended, requires the ITA to use BIA whenever a party is unable to provide the requested information in a timely manner and in the form required. 19 U.S.C. § 1677e(c) (1988), reproduced in App. J, pp. 84a-85a. In the underlying proceeding, Allied-Signal did not object to the ITA's compliance with this statute requiring the use of BIA. Rather, Allied-Signal challenged the ITA's unexplained adoption of a new two-tier BIA policy in the underlying final results of administrative review.

On July 11, 1991, the ITA published its Final Results of Antidumping Duty Administrative Reviews. App. H, pp. 54a-66a. In its final determination, the ITA adopted for the first time in a multiple-respondent administrative review the following two-tier BIA policy:

1. When a company refused to cooperate with the [ITA] or otherwise significantly impeded these proceedings, we have used as BIA the higher of: (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation (LTFV) or (2) the highest rate found in this review for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperated with our requests for information including, in some cases, verification, but failed to provide the information requested in a timely manner or in the form required, we have used as BIA the higher of: (1) The firm's LTFV rate for the subject merchandise (or the "all others" rate from the LTFV investigation, if the firm was not individually investigated), or (2) the highest calculated rate in this review for the class or kind of merchandise from the same country of origin.

App. I, p. 69a. After adopting this two-tier BIA policy, the ITA applied tier one BIA to SNFA's entries during the review period. App. I, p. 69a.

On August 29, 1991, Allied-Signal filed its complaint with the CIT challenging the ITA's adoption of the two-tier BIA policy in the underlying final results of administrative review. On appeal, Allied-Signal argued, in part, that the ITA's adoption of the two-tier BIA policy constituted an unexplained departure from the ITA's policy. The CIT issued its judgment and opinion on September 17, 1992. App. G, pp. 42a-53a. The CIT affirmed the

ITA's final results of administrative review, without addressing Allied-Signal's argument concerning an unexplained departure from agency policy. App. G, pp. 42a-53a.

Allied-Signal timely appealed the CIT's decision to the Federal Circuit on October 19, 1992. Again, Allied-Signal argued, in part, that the ITA's adoption of the two-tier BIA policy constituted an unexplained departure from the ITA's policy. On June 22, 1993, the Federal Circuit reversed the judgment of the CIT. App. E, pp. 24a-40a. The Federal Circuit ruled that the ITA improperly applied first tier, rather than second tier, BIA to SNFA's entries. App. E, pp. 38a-40a. Accordingly, the Federal Circuit remanded this matter and ordered the ITA to apply second tier BIA to SNFA's entries for the review period. App. E, pp. 38a-40a.

In response to Allied-Signal's argument that the ITA failed to explain its departure from policy, the Federal Circuit acknowledged that the ITA had adopted a new BIA policy. Specifically, the Federal Circuit found that the ITA initially applied the two-tier BIA policy in the underlying administrative proceeding and that the ITA subsequently acknowledged that it was the ITA's "'new policy for dealing with firms that refuse to cooperate with the ITA or otherwise significantly impede the proceedings.'" App. E, p. 34a. Notwithstanding the lack on the administrative record of a reasoned explanation supporting the new BIA policy, as well as the acknowledgment that the ITA had adopted a new BIA policy, the Federal Circuit's remand order failed to require the ITA to provide an explanation supporting its departure from policy. App. E, pp. 24a-40a. Allied-Signal was not in the position to appeal this failure inasmuch as it had received a favorable remand order.

On July 27, 1993, the CIT complied with the Federal Circuit's order by remanding this matter to the ITA. App. D, pp. 22a-23a. On September 2, 1993, the ITA transmitted its remand determination to the CIT. App. C, pp. 18a-21a. In its remand determination, the ITA assigned tier two BIA rates to SNFA's

entries during the period of review. App. C, pp. 20a-21a. The ITA's remand determination did not include a reasoned explanation supporting the new two-tier BIA policy. App. C, pp. 20a-21a.

On September 8, 1993, Allied-Signal filed a motion requesting the CIT to issue a scheduling order permitting the parties to file comments on the ITA's remand determination. On September 8, 1993, the CIT issued the requested scheduling order. On September 20, 1993, Allied-Signal filed its memorandum in opposition to the ITA's remand determination. Again, Allied-Signal argued, in part, that the ITA failed to explain its departure from policy.

On September 27, 1993, Respondent Federal-Mogul Corporation filed its rebuttal comments to Allied-Signal's memorandum in opposition to the ITA's remand determination. On October 4, 1993, Respondent, the United States, filed its memorandum in opposition to Allied-Signal's memorandum in opposition to the ITA's remand determination. On October 14, 1993, the CIT issued its opinion and order affirming the ITA's remand determination. App. B, pp. 11a-17a. The CIT did not address Allied-Signal's argument that the ITA failed to explain its departure from policy. App. B, pp. 11a-17a.

Allied-Signal timely appealed the CIT's second decision to the Federal Circuit on December 3, 1993. Again, Allied-Signal argued, in part, that the ITA's adoption of the two-tier BIA policy constituted an unexplained departure from the ITA's policy. Moreover, Allied-Signal argued that the Federal Circuit's first ruling in this proceeding was clearly erroneous because the Federal Circuit failed to require the ITA to provide a reasoned explanation for its departure from policy. In its second opinion, the Federal Circuit rejected Allied-Signal's argument and affirmed the ITA's remand determination. App. A, pp. 1a-10a. It is this ruling that is the subject of this petition.

REASONS FOR GRANTING THE PETITION

I. THE FEDERAL CIRCUIT'S DECISION DIRECTLY CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT

In this proceeding, Allied-Signal challenged the ITA's adoption of a new two-tier BIA policy in the underlying administrative review. Allied-Signal established that this two-tier BIA policy constituted a departure from the ITA's policy for multiple-respondent administrative reviews. An examination of the ITA's final results of administrative review establishes that the ITA merely announced its new two-tier BIA policy. App. I, pp. 68a-69a. Most significantly, this announcement failed to include any explanation, much less a reasonable explanation, supporting the ITA's departure from its policy.

In order to support its argument, Allied-Signal provided the Federal Circuit with a summary of the ITA's policy regarding BIA since 1982. This summary included every multiple-respondent administrative review in which the ITA applied its BIA policy. In every multiple-respondent administrative review conducted prior to the challenged underlying proceeding, the ITA consistently applied the same BIA policy to parties that failed to provide the ITA with the requested information. Indeed, the Federal Circuit's first opinion in this proceeding expressly recognized that:

> In giving effect to its [BIA] regulation, the ITA had earlier consistently subscribed to a "BIA policy" in which it assigned to a nonresponsive firm the higher of the highest rate calculated in the current administrative review or the firm's own prior rate.

App. E, p. 33a. The Federal Circuit then stated, under the heading "New BIA Methodology":

> The ITA departed from its prior BIA policy by employing, for the first time in its administrative review of antidumping duty orders covering antifriction bearings, a "two-tier BIA methodology." The methodology has been described as a "new policy for dealing with firms that refuse to cooperate with the [ITA] or otherwise significantly impede the proceedings." Final Results of Antidumping Duty Administrative Review: Clear Sheet Glass From Taiwan, 56 Fed. Reg. 44075 (Dep't Comm. Sept. 6, 1991).[2]

App. E, p. 34a. Despite this clear acknowledgment that the ITA had departed from its policy, the Federal Circuit's remand order failed to require the ITA to support its departure from policy with a reasoned explanation. App. E, pp. 24a-40a.

In its second appeal of this matter to the Federal Circuit, Allied-Signal challenged the court's failure to require the ITA to provide a reasoned explanation for its departure from policy. To support its argument, Allied-Signal relied upon this Court's precedent, as announced in Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29 (1983) (hereafter "Motor Vehicle") and the cases cited therein. The Federal Circuit dismissed Allied-Signal's argument by

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[2] The Court should note that this acknowledgment was made by the ITA in a subsequent determination that was published almost two months after publication of the challenged underlying administrative review results. It is also noteworthy that the ITA regulation, 19 C.F.R. § 353.37 (1994), does not specify what BIA should be selected and how it is to be applied. App. K, p. 86a. Rather, the ITA's BIA methodology has always been set forth in its published determinations.

narrowly interpreting Motor Vehicle to apply only to an agency that revokes an existing promulgated regulation. Specifically, the Federal Circuit reasoned as follows:

> In Motor Vehicle, the Supreme Court stated that an agency's decision to revoke an existing regulation promulgated under the rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. § 553, is void as arbitrary and capricious in the absence of a reasoned explanation for the revocation. As is explained below, Allied-Signal's reliance on Motor Vehicle in support of its contention that the ITA was required to afford a reasoned explanation for its application of a new BIA methodology is misplaced.
>
> The ITA's selection of the "all others" rates under the second tier of its new BIA methodology was not the type of "change in course" contemplated in Motor Vehicle to which a rationale by the agency was required. Unlike the regulation at issue in Motor Vehicle, the BIA methodology employed by the ITA in previous investigations did not rise to the level of an agency regulation having the force and effect of law. The fact that the ITA's prior methodology may appear to have been a de facto BIA "policy" by virtue of its long-time or consistent use did not preclude the ITA from utilizing a different methodology when, as in the present case, the agency determined in its discretion that the circumstances so warranted.

App. A, p. 9a. Based upon this reasoning, the Federal Circuit ruled that the ITA may depart from its established policy without supporting that departure on the administrative record with a reasoned explanation. As explained below, the Federal Circuit's ruling clearly conflicts with this Court's precedent.

In a case preceding Motor Vehicle, this Court made a ruling that directly conflicts with the Federal Circuit's decision in this proceeding. The case of Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade, 412 U.S. 800 (1973) (hereafter "Atchison, Topeka"), involved a departure from the policy of the Interstate Commerce Commission (hereafter "ICC"). No promulgated regulation was at issue in Atchison, Topeka. Additionally, this Court cited Atchison, Topeka with approval in Motor Vehicle. This Court, in Atchison, Topeka, remanded the ICC's decision because the ICC failed to support its departure from policy with a reasoned explanation.

Because Atchison, Topeka involved a departure from policy, rather than a promulgated regulation, it directly conflicts with the Federal Circuit's decision in this proceeding. Further, Atchison, Topeka clearly establishes a standard that an agency may depart from its policy as long as the agency supports that departure with a reasoned explanation. The reliance by this Court upon Atchison, Topeka in Motor Vehicle necessarily conflicts with the Federal Circuit's interpretation of Motor Vehicle to apply only where an agency revokes its promulgated regulation.

As explained above, the Federal Circuit's first opinion expressly acknowledged that the ITA had departed from its BIA policy covering multiple-respondent administrative reviews. In both of its opinions in this proceeding, however, the Federal Circuit failed to properly apply the standard established in Atchison, Topeka, and relied upon in Motor Vehicle, requiring the ITA to support its departure from policy with a reasoned explanation. Hence, by ignoring this standard, the Federal Circuit clearly decided a federal question of administrative law in a manner that directly conflicts with applicable decisions of this Court. That being the case, granting this Petition is appropriate pursuant to Rule 10.1(c) of the Rules of this Court. As explained below, the Federal Circuit's decision also creates a conflict in the United States Circuit Courts of Appeals that makes granting of this Petition appropriate pursuant to Rule 10.1(a).

II. THE FEDERAL CIRCUIT'S DECISION CREATES AN INTOLERABLE CONFLICT AMONG THE UNITED STATES CIRCUIT COURTS OF APPEALS

This Court's requirement that an agency support any departure from policy with a reasoned explanation is such a fundamental principle of administrative law that Allied-Signal has located numerous cases from the First, Third, Fifth, Seventh, Ninth, and D.C. Circuits that directly conflict with the Federal Circuit's decision in this proceeding. To conserve space, Allied-Signal has provided the citations for these decisions in Appendix L, pp. 87a-89a. In each case the court relied upon either Motor Vehicle or Atchison, Topeka, and in some cases both, to either reverse or remand departures from policy that the agency failed to support with a reasoned explanation.

The only distinguishing feature of these cases from this proceeding is that the agencies in the cited cases conducted the proceedings at issue pursuant to the Administrative Procedure Act. In this proceeding, as explained above, the ITA does not conduct antidumping administrative reviews pursuant to the Administrative Procedure Act. Rather, the ITA exercises the investigatory power vested by the Tariff Act of 1930, as amended. 19 U.S.C. §§ 1673-1677k (1988 & Supp. V 1993). Nonetheless, it is respectfully submitted that the policy supporting this Court's rule applies equally to the ITA operating in its investigatory capacity.

This Court requires an agency to justify a departure from policy so that the Court can understand the policy the agency is pursuing. Atchison, Topeka, 412 U.S. at 808. The reasoned explanation for any departure from policy is necessary so that the Court can ensure that the agency's new policy comports with the agency's statutory mandate. Id. This Court has expressly stated that "[i]f a reviewing court cannot discern those policies, it may remand the case to the agency for clarification and further justification of the departure from precedent." Id. at 822.

Unlike the Circuit Courts that made the decisions listed in Appendix L, the Federal Circuit in this proceeding failed to follow this Court's guidance. The extreme number of cases that conflict with the Federal Circuit's decision clearly establishes a severe departure by the Federal Circuit from the accepted and usual course of judicial precedent which should not be tolerated. Accordingly, this severe departure necessarily justifies the exercise of this Court's supervision over the Federal Circuit. See Rule 10.1(a) of the Rules of this Court.

III. THE FEDERAL CIRCUIT'S DECISION ADVERSELY IMPACTS THE PUBLIC BECAUSE IT FREES THE ITA TO MAKE ARBITRARY DECISIONS IN ALL SUBSEQUENT ANTIDUMPING PROCEEDINGS

Absent this Court's supervision, the Federal Circuit's ruling will detrimentally affect every subsequent antidumping investigation and administrative review conducted by the ITA. Pursuant to 19 U.S.C. § 1516a (1988 & Supp. V 1993) and 28 U.S.C. § 1581 (1988 & Supp. V 1993), the CIT has exclusive jurisdiction over the ITA's final antidumping determinations. The Federal Circuit, in turn, has exclusive jurisdiction over an appeal from a final decision of the CIT. 28 U.S.C. § 1295(a)(5) (1988). The Federal Circuit's decision in this matter, therefore, controls all future antidumping proceedings conducted by the ITA.

The Federal Circuit's decision effectively eliminates judicial supervisory review power over future ITA antidumping determinations. If this Court permits the decision to stand, the ITA will not be constrained in future antidumping proceedings to explain other departures from its established policies with reasoned

explanations on the record.[3] This is tantamount to a substantial injustice because it leaves interested parties participating in ITA proceedings dependent upon the vagaries of ITA policy making without the protection afforded by appellate court review. As stated by this Court,

> [e]xpert discretion is the lifeblood of the administrative process, but "unless we make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion."

Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 167 (1962) (emphasis in original) (quoting New York v. United States, 342 U.S. 882, 884 (1951) (dissenting opinion)).

The implications of the lack of agency accountability created by the Federal Circuit are fundamental and far-reaching. The freeing of the ITA from the seemingly inviolate requirement under administrative law for the support of changes in policy and precedent by means of a reasoned explanation subjects the international trade community to uncertainty, as well as the risk of abrupt and arbitrary changes in ITA policy in all future antidumping proceedings. In view of the fact that every year thousands of domestic and foreign companies are affected by scores of antidumping investigations and administrative reviews, which involve billions of dollars of imported goods,[4] the

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[3] The Court should note that the ITA has consistently relied upon the Federal Circuit's first opinion in this matter to apply the challenged new two-tier BIA policy in numerous antidumping proceedings over the past several years during which Allied-Signal's appeals have been pending.

[4] See Annual Report on the Status of Antidumping and Countervailing Duty Program, Department of the Treasury, 1992.

consequences for abuses of discretion by the ITA are necessarily grave.

This Court should be deeply concerned by the inherent fallacy underlying the Federal Circuit's ruling. According to the Federal Circuit, the ITA must only explain a departure from its promulgated regulations. A review of the ITA regulations reveals, however, that the regulations primarily mirror the Tariff Act of 1930, as amended. Compare 19 U.S.C. §§ 1673-1677k (1988 & Supp. V. 1993) with 19 C.F.R. Part 353 (1994). Because the regulations merely reflect the statute, it is the ITA's published determinations that provide the true source of the agency's policies. As discussed supra, this is particularly the case with respect to the ITA regulation on BIA. See App. J, pp. 84a-85a and App. K, p. 86a. These policies establish the guidelines the ITA follows in its proceedings to determine the existence and extent of antidumping duty liability. Moreover, as with the BIA policy at issue herein, the ITA's determinations have consistently applied these antidumping policies throughout the years. Under the Federal Circuit's opinion, however, the ITA now has carte blanche authority to depart from these policies at any time without providing a supporting rationale.

This Court must recognize that interested parties, both foreign and domestic, participate in the ITA's proceedings with the reasonable expectation that the agency will follow its regulations, policies and precedent. From this reasonable expectation flows the fundamental principle of administrative law requiring the ITA to support any departure from its policies with a reasoned explanation contained on the administrative record. See Atchison, Topeka, 412 U.S. at 808. Indeed, interested parties request administrative reviews relying upon this expectation. In this regard, prior to the publication of the challenged ITA determination, Allied-Signal reasonably expected the ITA to continue to follow its prior BIA policy applicable to multiple-respondent administrative reviews. That the ITA departed from that policy without a reasoned explanation on the record, along with the Federal Circuit's decision to uphold the ITA's unsupported departure, amounts to

a substantial injustice because Allied-Signal is deprived of the proper administration of the law. Consequently, from this point forward, no party will be able to rely upon past ITA precedent and policy when subject to the ITA's proceedings.

As a direct result of the ITA's actions, Allied-Signal is required to pay inflated and unlawful antidumping duties and deposits. In the remand determination, the ITA assigned SNFA the following margins for its entries during the subject period of review: 65.13% for ball bearings; and 17.31% for cylindrical roller bearings. In the event that the ITA had utilized its prior BIA policy and properly assigned SNFA's entries the highest rates calculated during the administrative review, the margins would be: 7.79% for ball bearings; and 10.63% for cylindrical roller bearings. The difference between these margins translates for Allied-Signal into confiscatory deposit rates and an oppressively onerous monetary amount for every administrative review of the subject antidumping duty order. In effect, application of the ITA's unsupported and unlawful two-tier BIA policy converts, without legal justification, Allied-Signal's duty deposit for the benefit of the United States Treasury. This amounts to a substantial injustice.

The ITA's continued failure to provide reasoned explanations for its changes in policy will also fail to lend respectability to U.S. trade statutes in the international community. The ITA's arbitrary administration of the antidumping statute has been a fertile subject of several critical articles. See App. M, pp. 90a-160a, for reproductions of these articles. The Federal Circuit's unlawful decision now provides the ITA with the legal support to make decisions in an arbitrary manner without being accountable to its reviewing courts. In light of these circumstances, it is respectfully submitted that holding the ITA to the mandate articulated in Atchison, Topeka, as consistently applied by many of the Circuit Courts of Appeals, would preserve and strengthen a sound judicial policy that imposes upon an administrative agency the affirmative obligation to adequately explain its actions.

IV. CONCLUSION

For all the reasons set forth herein, Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeals for the Federal Circuit.

Respectfully submitted,

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